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12   UNITED STATES DISTRICT COURT

13   NORTHERN DISTRICT OF CALIFORNIA

14   SAN FRANCISCO DIVISION

15

16 | ORACLE AMERICA, INC., | Case No. 3:10-cv-03561 WHA |
|---|---|
17 | Plaintiffs, | **DEFENDANT GOOGLE INC.'S ADMINISTRATION MOTION TO SEAL MOTIONS IN LIMINE AND CORRESPONDING EXHIBITS** |
18 | v. | |
   | GOOGLE INC., | |
19 | | |
   | Defendant. | Dept.   Courtroom 8, 19th Fl. |
20 | | Judge: Hon. William Alsup |

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1   Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google Inc. ("Google") hereby

2 moves to file under seal the following documents:

3   - Portions of Defendant Google Inc.'s Motion *in Limine* No. 4 to Strike Market

4   Harm Testimony from Expert Report of Dr. Adam Jaffe;

5   - Portions of Defendant Google Inc.'s Motion *in Limine* No. 6 to exclude Portions

6   of Expert Report and Testimony of James Malackowski;

7   - Exhibits 2, 6, 9, 10, and 11 to the Declaration of Maya Karwande in Support of

8   Google's Motions in Limine ("Karwande Decl.");

9   - Portions of Exhibits A, B, C, D, E, F, and G to the Declaration of Edward A.

10   Bayley in Support of Google's Motions in Limine ("Bayley Decl.").

11 **I.   INTRODUCTION**

12   Google requests that the Court allow Oracle requests that the Court allow Google to file

13 the documents listed above under seal. On March 23, 2016, Google filed several motions *in*

14 *limine* and supporting materials thereto (collectively "the MILs") which, by necessity, contain

15 non-public, highly sensitive information important to Google's business and therefore should be

16 filed under seal. In support of its request to seal, Google has identified a narrowly-tailored list of

17 those portions of the MILs that contain highly sensitive Google trade secret information that is

18 subject to sealing. *See* Declaration of Renny Hwang in Support of Google Inc.'s Administrative

19 Motion to Seal Motions in Limine and Corresponding Exhibits ("Hwang Decl.").

20   In addition, certain portions of the MILs have been designated as "CONFIDENTIAL" or

21 HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY by Plaintiff Oracle America, Inc.

22 ("Oracle"). *See* Declaration of Reid Mullen in Support of Google Inc.'s Administrative Motion

23 to Seal Motions in Limine and Corresponding Exhibits ("Mullen Decl."). Accordingly, Google

24 moves to file those portions of the MILs designated by Oracle under seal pursuant to the

25 Stipulated Protective Order and Local Rule 79-5(e).

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DEFENDANT GOOGLE INC.'S ADMINISTRATION MOTION TO SEAL MOTIONS IN LIMINE AND
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II. DISCUSSION

A. The material that Google seeks to file under seal constitutes non-public, highly-sensitive, and confidential financial and trade secret information.

A compelling justification to seal pleadings exists when disclosure of "business information . . . might harm a company's competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006); N.D. Cal. Civ. L.R. 79-5(a).   Courts have therefore concluded that it is appropriate to seal documents containing sensitive financial information and similar trade secrets information. *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972); *Apple Inc. v. Samsung Elecs. Co. Ltd.*, 727 F.3d 1214, 1224-26 (Fed. Cir. 2013) (district court abused discretion by not sealing portions of documents containing sensitive financial information); *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569-70 (9th Cir. 2008) (granting writ of mandamus and directing district court to seal "pricing terms, royalty rates, and guaranteed minimum payment terms" of licensing agreement because terms were trade secrets).

In this case, disclosure of the non-public information that Google seeks to file under seal constitutes highly sensitive financial information. Hwang Decl. ¶¶ 2-3. Public disclosure of this information could therefore "have significant negative effects on Google's business." *Id.* ¶ 2. In addition, the material Google seeks to file under seal also contains sensitive and confidential information that is subject to non-disclosure agreements with third parties and has never been publicly disclosed. *Id.* ¶ 3. Public disclosure of such information could "severely and adversely impact Google's ability to negotiate, among other things, similar terms with other third parties in connection with similar agreements now or in the future." *Id.*

Because disclosure of this "business information . . . might harm [Google's] competitive standing," there is a compelling justification to seal information of the kind described above. *Nixon*, 435 U.S. at 598 (1978). Indeed, the Court has previously granted motions to seal these types of materials in this case. *See, e.g.*, Dkt. No. 1541 (granting motion to seal Google financial information); Dkt. No. 1375 (same); *see also, e.g.*, Dkt. No. 687 at 2 (sealing "non-public information about licensing agreements with third parties"), Dkt. No. 583 (same), Dkt. 1541

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1   (same).

2   For the reasons stated above, Google seeks to seal portions of the following materials on

3   the grounds that they contain Google's non-public, highly sensitive financial and/or trade secret

4   information relating to agreements between Google and third parties. Hwang Decl. ¶¶ 2-3.

5   ### 1.   Google's Motions in Limine

6   The following portions of Google's Motions in Limine, filed on March 23, 2016, contain

7   non-public, highly sensitive financial information of Google:

8   Defendant Google Inc.'s Motion *in Limine* No. 4 to Strike Market Harm Testimony from

9   Expert Report of Dr. Adam Jaffe at 3:7-10, 4:23-26, 5:3-6, 6:2-9; and

10   Defendant Google Inc.'s Motion *in Limine* No. 6 to exclude Portions of Expert Report and

11   Testimony of James Malackowski at 1:11-12, 1:26-27, 2:3, 2:15, 4:19, 4:21, 6:2, 6:5, 6 n.2,

12   15:19, 16:14-16, 20:13, 24:24, 24L26-27, 25:1, 25:7, 25:11-12.

13   ### 2.   Testimony and Reports of James E. Malackowski

14   Mr. Malackowski was retained by Oracle as an expert. The following portions of his

15   January 8, 2016 opening and February 29, 2016 rebuttal expert reports and supporting exhibits, as

16   well as his March 16, 2016 deposition testimony contain non-public, highly sensitive financial

17   information of Google.

18   #### a.   January 8, 2016 Report (Bayley Decl. Ex. F)

19   Bayley Decl. Ex. F ¶ 38; ¶ 51; ¶ 118; ¶ 132; ¶¶1 53-158; ¶ 163; ¶ 173; ¶ 216; ¶¶ 249-50; ¶

20   255; ¶ 256; ¶ 258; ¶ 260; ¶ 263; ¶ 267; ¶¶ 274-276; ¶ 282; ¶ 284; ¶ 286; ¶ 288; ¶ 290; ¶¶ 292-294;

21   ¶¶ 300-303; ¶ 305; ¶ 307; ¶¶ 315-316; and FIGS. 3, 31-32, 36, 40-41, 43-44, 45, 46, and 47, p. 92

22   (ex. 7); p. 93 (ex. 7.1), p. 94 (ex. 8), p. 95 (ex. 8.1).

23   #### b.   February 29, 2016 Report (Bayley Decl. Ex. G)

24   Bayley Decl. Ex. G ¶¶ 64-65; FIG. 3; ¶ 67; ¶ 69; ¶ 73; ¶¶ 79-80; ¶ 83;¶¶ 85-86; ¶ 90;¶¶

25   92-94; fn. 85; fn. 88;¶¶ 97-99; ¶ 107; ¶¶ 274-279; FIG. 12; ¶¶ 281-284; ¶¶ 286-287; ¶¶ 291-293; ¶

26   298; ¶¶ 302-304; FIG. 13; pp. 162-280 (ex. 7-8.1); pp. 202-206 (ex. 14-14.2).

27   #### c.   March 16, 2016 Depo. Testimony (Karwande Decl. Ex. 6)

28   Karwande Decl. Ex. 6 (Deposition of Mr. Malackowski): 93:3, 93:35.6, 93:9, 232:6,

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1   232:12, 232:19, 232:22, 233:7, 343:4, 343:6, 348:7.

2   **3.   Testimony and Reports of Adam Jaffe, PhD**

3   **a.   February 8, 2016 Report (Bayley Decl. Ex. A)**

4   Bayley Decl., Ex. A ¶ 12, ¶ 21, ¶25, FIG. 30, ¶ 197, ¶ 221, FIG. 39, n.299, ¶ 224, n.321, ¶

5   234-235, n.328, FIG. 43, ¶ 240, ¶ 244, ¶ 246, ¶ 249, ¶ 255, ¶ 258, FIG. 47, tbl. 6, FIG. 48, ¶ 267,

6   ¶ 269, ¶ 272, FIG. 49, ¶ 273, ¶ 274, FIG. FIG. 61, ¶ 339, ¶ 340, ¶385, ¶ 389, Exs. 8-9, Exs. 11-16.

7   **b.   February 29, 2016 Report (Bayley Decl. Ex. B)**

8   Bayley Decl., Ex. B ¶ 36, ¶ 37, ¶ 56.

9   **4.   Testimony and Reports of Chris F. Kemerer, PhD**

10   **a.   January 8, 2016 Report (Bayley Decl. Ex. C)**

11   Bayley Decl., Ex. C at pp. 216-217.

12   **b.   February 8, 2016 Report (Bayley Decl. Ex. D)**

13   Bayley Decl. Ex. D at ¶¶ 208-209.

14   **III.   MATERIAL DESIGNATED BY ORACLE AS "CONFIDENTIAL" AND/OR "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY"**

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16   Pursuant to Civil Local Rule 79-5(e) and section 14.4 of the Stipulated Protective Order in

     this case, Google seeks to file under seal material document that summarize, quote from, or

17   reproduce portions of materials that have been designated by Oracle as "CONFIDENTIAL" or

18   "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" under the Protective Order. The

19   portions of those documents that summarize, quote from, or reproduce portions of materials

20   designated by Oracle as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S

21   EYES ONLY" are set forth in the Declaration of Reid Mullen in Support of Google's

22   Administrative Motion to Seal Motions in Limine and Corresponding Exhibits.

23   Google states no position on whether disclosure of the information designated by Oracle

24   would result in competitive harm to Oracle.

25   **IV.   CONCLUSION**

26   For the foregoing reasons, Google respectfully requests that the Court issue an order

27   granting Google's request to file the foregoing documents under seal.

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2 Dated: March 23, 2016   KEKER & VAN NEST LLP

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4   By: /s/ Robert A. Van Nest
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